IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 281 of 2003
WITH
CIVIL APPLICATION NO.378 OF 2003
in
SPECIAL CIVIL APPLICATION No 740 of 2002

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

GUJARAT STATE TRANSPORT KARMACHARI UNION

Appearance:

1. LETTERS PATENT APPEAL No. 281 of 2003
MRS VASAVDATTA BHATT for Appellant No.
MR AK CLERK for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 16/06/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

1. Admit. Mr.A.K.Clerk, learned advocate for the respondent waives service of notice. The Letters Patent Appeal is taken up for final hearing in view of the peculiar facts and circumstances of the case.

2. By this Letters Patent Appeal, the appellant-Gujarat State Road Transport Corporation, Ahmedabad (GSRTC), has assailed the judgment of learned Single Judge recorded on 07/05/2002 in Special Civil Application No.740 of 2002 whereby the challenged award of the Industrial Tribunal, Surat, came to be rejected, by invoking the powers of Clause 15 of the Letters Patent.

3. A resume of short, relevant and material facts leading to the rise of the Appeal needs narration for the purpose of appreciation of the merits of appeal and challenge against it. It starts with the day on 25-10-1988 when the respondent-Conductor was in charge of the bus, which was plying from Katargam to Kashiwad. It was checked by the Checking Squad during that time, and it was found that 20 passengers were travelling without tickets, and respondent-Conductor had collected fare from the said passengers. The respondent had also kept the way-bill open, till the checking was carried out. The respondent, therefore, came to be charge-sheeted in domestic inquiry, and during the enquiry, the charges levelled against the respondent-Conductor were held to be proved. Upon proof of the delinquency, the respondent-Conductor came to be punished by the competent authority of the appellant-Corporation by order dated 21-12-1988, whereby it has imposed punishment of withholding of five annual increments with cumulative effect, which was challenged successfully by the respondent-Conductor, before the Industrial Tribunal, Surat, by raising Reference (IT) No.19 of 1996. The Industrial Tribunal found that there was no sufficient material for proving the charges against the Conductor. The order passed in the Departmental Enquiry, therefore, came to be quashed, which was further challenged by the present appellant by filing Special Civil Application No. 740 of 2002, but unsuccessfully.

4. We are conscious of the fact that there are certain inhibitions in exercising powers under Clause 15

of the Letters Patent when two authorities have recorded concurrent findings. Nonetheless, when this Court, upon true analysis and correct appraisal, and thorough evaluation of the evidence, finds that no other view could have been recorded by the Industrial Tribunal than that of recording of the delinquency of the respondent, in view of the facts and circumstances, and the evidence on record, powers need to be exercised. It appears that the Tribunal laid more emphasis on non-recording of statements of the passengers. It is a matter of common understanding that persons travelling in a public utility vehicle, like ST bus, upon such a raid having taken place, obviously, would not wait, and at times, it becomes very difficult to procure their statements. The authorities below had to go by the intrinsic worth of the evidence because in a domestic inquiry the yardstick of proof is not the same as that of the criminal trial. It is a settled proposition of law that upon evaluation of the reliable evidence from the record, even on the yardstick of preponderance of probability, if the delinquency is established, such an approach cannot be said to be in any way unjust and unreasonable. It appears that the Hon'ble Tribunal has failed to appreciate the fundamental principle of appreciation of evidence in a departmental inquiry or in an Industrial Tribunal. The Industrial Tribunal has failed to apply this principle to the facts of the present case, which has led it to a palpable error, which, unfortunately, could not be corrected, even in the writ petition by the learned Single Judge. It is in this set of circumstances, and the proposition of law, we are satisfied that this is a fit and proper case for holding the respondent-original workman-Conductor guilty of the charges levelled against him. It is evident from the record that the delinquency has been proved to the hilt on the principle of preponderance of probability yardstick. The finding recorded by the Industrial Tribunal on this score, and confirmed by the learned Single Judge, needs to be reversed. Accordingly, it is reversed and the delinquency is held to be established.

5. Obviously, it would now take us to the consideration of the second issue of quantum of punishment. Therefore, the point in focus would be what should be the quantification of punishment. It is a settled proposition of law that punishment should be proportionate to the extent, decree and the quality of the delinquency. After having thrown into scale all the relevant facts and circumstances emerging from the record of the present case, and bearing in mind the celebrated doctrine of proportionality, and the latest proposition

on this count, and also considering the past conduct and the antecedents of the respondent-delinquent, we are of the opinion that ends of justice will be met if the respondent-Conductor is imposed punishment of stoppage of increment for three years without any future effect.

6. In the result, the Appeal is partly allowed. The respondent-workman is held to be delinquent for the charges framed against him by the Department, and therefore, he is imposed the penalty of three increments without any future effect.

Before parting with, we hope and trust that considering the aforesaid imposition of the punishment on the respondent-workman, and in view of the long pendency of the controversy between the parties, the appellant will expeditiously pay up the due and payable amount to the respondent-workman, preferably before completion of ten weeks from today.

Civil Application shall accordingly stand disposed of. There shall be no order as to costs.

(J.N. BHATT, ACTING C.J.)

(A.L. DAVE, J.)

[SNDEVU]
P.S.